B&W Service Industries, Inc. *and* Laborers' Local No. 309, Laborers' International Union of North America, AFL–CIO. Case 33–CA–10230

November 26, 1993

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS DEVANEY AND RAUDABAUGH

Upon a charge filed by the Union on May 21, 1993, and a first amended charge filed on June 10, 1993, the General Counsel of the National Labor Relations Board issued a complaint on June 29, 1993, against B&W Service Industries, Inc., the Respondent, alleging that it has violated Section 8(a)(5) and (1) of the National Labor Relations Act. On May 21, 1993, copies of the charge were served by certified mail on the Respondent at its business address in Rock Island, Illinois, and its principal place of business in Inglewood, California. The copy sent to the Rock Island, Illinois address was returned with a notation on the envelope that the "Addressee is no longer located at this location." The copy sent to the Inglewood, California address was returned with the notation, "Unclaimed" on the envelope. On June 16, 1993, copies of the charge were re-sent to both addresses by regular mail. To date, the copies sent by regular mail have not been returned. On June 10, 1993, copies of the first amended charge were served by certified mail on the Respondent at its Rock Island, Illinois, and Inglewood, California addresses. The copy sent to the Rock Island, Illinois address was returned with the notation, "Not Located at Rock Island Arsenal" on the envelope. The copy sent to the Inglewood, California address was returned with the notation, "Refused" on the envelope. On June 16, 1993, copies of the first amended charge were re-sent to both addresses by regular mail. To date, the copies sent by regular mail have not been returned.

On June 29, 1993, copies of the complaint and notice of hearing were served on the Respondent at its Rock Island, Illinois, and Inglewood, California addresses by certified mail, return receipt requested. The copy sent to the Rock Island, Illinois address was returned with the notation, "No Longer Located at R.I.A." on the envelope. The copy sent to the Inglewood, California address was returned with the notation, "FWD to 5864 Canterbury Dr. Culver City 90230" on the envelope. On August 6, 1993, copies of the complaint and notice of hearing were served on the Respondent at its Inglewood and Culver City, California addresses set forth above, by regular and certified mail, return receipt requested. The copy sent by certified mail to the Inglewood, California address was returned with a forwarding address label stating the new address of B&W Service Industries, Inc. as "5864 Canterbury Dr., Culver City, CA 90230-6739." The copy sent to the Culver City, California address was returned with the notation, "Unclaimed" on the envelope. On August 23, 1993, a Board agent from Region 31 attempted service of the charge, first amended charge, and complaint and notice of hearing on the Respondent at its Inglewood, California address. On September 3, 1993, two Board agents from Region 31 attempted personal service of the charge, first amended charge, and complaint and notice of hearing on Roosevelt Walker, the Respondent's principal, at his mailing address. A copy of the complaint and notice of hearing was left at that address. Although properly served copies of the charge, first amended charge, and complaint and notice of hearing, the Respondent failed to file an answer.[1]

On November 4, 1993, the General Counsel filed a Motion for Summary Judgment with the Board. On November 8, 1993, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

Ruling on Motion for Summary Judgment

Sections 102.20 and 102.21 of the Board's Rules and Regulations provide that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the complaint affirmatively notes that unless an answer is filed within 14 days of service, all the allegations in the complaint will be considered admitted.

In the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

The Respondent, a California corporation with a principal place of business at Inglewood, California, and with an office and place of business located at the Rock Island Army Arsenal in Rock Island, Illinois (the

[1] Although the General Counsel's motion indicates that the charge, first amended charge, and the complaint were served by certified mail but were returned to the Regional Office marked, "unclaimed" or "refused," failure or refusal to accept service cannot defeat the purposes of the Act. See, e.g., *Michigan Expediting Service*, 282 NLRB 210 fn. 6 (1986). The General Counsel also alleges, with supporting documentary proof, that the charge, first amended charge, and the complaint were also sent by regular mail. The failure of the Postal Service to return documents served by regular mail indicates actual receipt of those documents by the Respondent. *Lite Flight, Inc.*, 285 NLRB 649, 650 (1987). Therefore, we find that the Respondent was properly served the charge, first amended charge, and the complaint.

Arsenal), has been engaged in the business of providing janitorial services. During the past calendar year, the Respondent, in conducting its business operations, provided services valued in excess of $50,000 directly to customers located outside the State of California. During the past calendar year, the Respondent, in conducting its business operations, purchased and received at the Arsenal goods valued in excess of $50,000 directly from points outside the State of Illinois. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act, and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

The following employees of the Respondent (the unit) constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

> All full-time and regular part-time janitorial employees employed by the Respondent at the Rock Island Arsenal in Rock Island, Illinois; but excluding all other employees, including office clerical employees, professional employees, guards and supervisors as defined in the Act.

On November 17, 1989, the Union was certified as the exclusive collective-bargaining representative of the unit. At all times since November 17, 1989, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the unit. The Respondent and the Union have entered into collective-bargaining agreements, the most recent of which is effective from August 1, 1990, to July 31, 1993, unless either party served the other party with 60 days' notice of its desire to terminate or modify the agreement.

Since about May 10, 1993, the Respondent has failed and refused to recognize and bargain with the Union as the exclusive collective-bargaining representative of the unit. Since on or about May 10, 1993, and continuing to date, the Respondent has repudiated its collective-bargaining agreement with the Union. Since on or about May 10, 1993, and continuing to date, the Respondent has refused and failed to pay the employees within the unit for hours they worked from April 11 through May 17, 1993, as specified and required in the collective-bargaining agreement. Since on or about May 10, 1993, and continuing to date, the Respondent has refused and failed to make contributions to fringe benefit funds for the time period of April 11 through May 17, 1993, to employees within the unit, as specified and required in the collective-bargaining agreement. Since on or about May 10, 1993, and continuing to date, the Respondent has refused and failed to remit to the Union dues moneys from employees within the unit for the time period of April 11 through May 17, 1993, as specified and required in the collective-bargaining agreement. Since on or about May 10, 1993, and continuing to date, the Respondent has refused and failed to pay accrued vacation pay to employees within the unit, as specified and required in the collective-bargaining agreement. Since on or about May 10, 1993, the Respondent has failed to continue in effect all the terms and conditions of the collective-bargaining agreement and engaged in such conduct without the Union's consent. The Respondent engaged in this conduct even though a written notice of the termination and/or modification of the agreement was not previously served on the Union or the Federal Mediation and Conciliation Service.

CONCLUSION OF LAW

By the acts and conduct described above, the Respondent has been failing and refusing to bargain collectively and in good faith with the exclusive collective-bargaining representative of its employees within the meaning of Section 8(d) of the Act and in violation of Section 8(a)(1) and (5) and Section 8(d) of the Act, and has thereby engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and (5) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent has violated Section 8(a)(5) and (1) by failing to pay wages and benefits as required by the collective-bargaining agreement, we shall order the Respondent to comply with the agreement and to make whole its unit employees for its failure to pay contractual wages and accrued vacation pay, in the manner set forth in *Ogle Protection Service*, 183 NLRB 682 (1970), enfd. 444 F.2d 502 (6th Cir. 1971), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

Additionally, having found that the Respondent has violated Section 8(a)(5) and (1) by failing to make contractually required contributions to fringe benefit funds, we shall order the Respondent to make whole its unit employees by making all payments that have not been made and that would have been made but for the Respondent's unlawful failure to make them, including any additional amounts applicable to such delinquent payments as determined in accordance with the criteria set forth in *Merryweather Optical Co.*, 240 NLRB 1213 (1979). In addition, the Respondent shall reimburse unit employees for any expenses ensuing from its failure to make such required payments, as set forth in *Kraft Plumbing & Heating*, 252 NLRB 891 fn.

2 (1980), enfd. mem. 661 F.2d 940 (9th Cir. 1981), such amounts to be computed in the manner set forth in *Ogle Protection Service*, supra, with interest as prescribed in *New Horizons for the Retarded*, supra.

Finally, having found that the Respondent violated Section 8(a)(5) and (1) by failing to remit to the Union dues that were deducted from the pay of unit employees pursuant to valid dues-checkoff authorizations, we shall order the Respondent to remit such dues to the Union, with interest, to be computed in the manner prescribed in *New Horizons for the Retarded*, supra.

We shall also order the Respondent to recognize and bargain with the Union and, at the request of the Union, restore all the terms and conditions of the collective-bargaining agreement.

Because the documentary evidence submitted by the General Counsel in support of its Motion for Summary Judgment seems to indicate that there may be no employees at the Rock Island, Illinois location, we will order the Respondent to mail copies of the notice to all unit employees currently employed or employed anytime during the period from April 11 through May 17, 1993.

ORDER

The National Labor Relations Board orders that the Respondent, B&W Service Industries, Inc., Rock Island, Illinois, and Inglewood, California, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to recognize and bargain with Laborers' Local No. 309, Laborers' International Union of North America, AFL–CIO as the exclusive collective-bargaining representative of the unit. The unit consists of the following employees:

> All full-time and regular part-time janitorial employees employed by the Respondent at the Rock Island Arsenal in Rock Island, Illinois; but excluding all other employees, including office clerical employees, professional employees, guards and supervisors as defined in the Act.

(b) Repudiating the collective-bargaining agreement with the Union which is effective from August 1, 1990, to July 31, 1993, unless either party served the other party with 60 days' notice of its desire to terminate or modify the agreement.

(c) Refusing and failing to pay the employees within the unit for hours they worked from April 11 through May 17, 1993, as specified and required in the collective-bargaining agreement.

(d) Failing and refusing to make contributions to fringe benefit funds for the time period of April 11 through May 17, 1993, as specified and required in the collective-bargaining agreement.

(e) Failing and refusing to remit to the Union dues moneys from employees within the unit for the time period of April 11 through May 17, 1993, as specified and required in the collective-bargaining agreement.

(f) Failing and refusing to pay accrued vacation pay to employees within the unit, as specified and required in the collective-bargaining agreement.

(g) Failing to continue in effect all the terms and conditions of the collective-bargaining agreement and engaging in such conduct without the Union's consent.

(h) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Make unit employees whole for any loss of benefits or other expenses suffered as a result of the Respondent's failure to pay employees wages and benefits required by the collective-bargaining agreement, as set forth in the remedy section of this decision.

(b) Remit union dues as provided in the collective-bargaining agreement and reimburse the Union for its failure to do so for the time period of April 11 through May 17, 1993, in the manner set forth in the remedy section of this decision.

(c) Continue in full force and effect all the terms and conditions of the collective-bargaining agreement.

(d) Recognize and bargain with the Union as the exclusive collective-bargaining representative of our unit employees.

(e) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(f) Mail an exact copy of the attached notice marked "Appendix"[2] to the Union and to all unit employees currently employed or employed anytime during the period from April 11 through May 17, 1993. Copies of the notice, on forms provided by the Regional Director for Region 33, after being signed by the Respondent's authorized representative, shall be mailed immediately upon receipt.

[2] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

(g) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

Dated, Washington, D.C. November 26, 1993

James M. Stephens,	Chairman
Dennis M. Devaney,	Member
John Neil Raudabaugh,	Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT fail or refuse to recognize and bargain with Laborers' Local No. 309, Laborers' International Union of North America, AFL–CIO as the exclusive collective-bargaining representative of the unit. The unit consists of the following employees:

> All full-time and regular part-time janitorial employees employed by us at the Rock Island Arsenal in Rock Island, Illinois; but excluding all other employees, including office clerical employees, professional employees, guards and supervisors as defined in the Act.

WE WILL NOT repudiate the collective-bargaining agreement with the Union which is effective from August 1, 1990, to July 31, 1993, unless either party served the other party with 60 days' notice of its desire to terminate or modify the agreement.

WE WILL NOT refuse or fail to pay the employees within the unit for hours they worked from April 11 through May 17, 1993, as specified and required in the collective-bargaining agreement.

WE WILL NOT fail or refuse to make contributions to fringe benefit funds for the time period of April 11 through May 17, 1993, as specified and required in the collective-bargaining agreement.

WE WILL NOT fail or refuse to remit to the Union dues moneys from employees within the unit for the time period of April 11 through May 17, 1993, as specified and required in the collective-bargaining agreement.

WE WILL NOT fail or refuse to pay accrued vacation pay to employees within the unit, as specified and required in the collective-bargaining agreement.

WE WILL NOT fail to continue in effect all the terms and conditions of the collective-bargaining agreement and engaging in such conduct without the Union's consent.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL make our unit employees whole, with interest, for any loss of benefits or other expenses suffered as a result of our failure to pay employees wages and benefits required by the collective-bargaining agreement.

WE WILL remit union dues as provided in the collective-bargaining agreement and reimburse the Union for our failure to do so for the time period of April 11 through May 17, 1993.

WE WILL continue in full force and effect all the terms and conditions of the collective-bargaining agreement.

WE WILL recognize and bargain with the Union as the exclusive collective-bargaining representative of our unit employees.

B&W SERVICE INDUSTRIES, INC.